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7 JOSEPH G. MCGILL,
8 Plaintiff,
9 v.
10 THE HOME DEPOT, INC.,
11 Defendant.

Case No. [15-cv-03029-KAW](#)

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND**

Re: Dkt. Nos. 9-11

12 On January 20, 2015, Plaintiff Joseph G. McGill filed this case against Defendant Home
13 Depot, Inc. in Marin County Superior Court. (Compl., Dkt. No. 1, Ex. A.) On June 30, 2015,
14 Home Depot U.S.A., Inc. removed the case to federal court on the grounds that it was made aware
15 on June 1, 2015 that the amount in controversy exceeded \$75,000, such that there is complete
16 diversity of citizenship between the parties. On July 30, 2015, Plaintiff filed a motion to remand
17 the case to state court.

18 Upon review of the moving papers, the Court finds this matter suitable for resolution
19 without oral argument pursuant to Civil Local Rule 7-1(b), and finds that Defendant's removal
20 was timely, such that Plaintiff's motion to remand is DENIED.

21 **I. BACKGROUND**

22 On February 1, 2013, Plaintiff Joseph G. McGill was shopping at Home Depot in San
23 Rafael, California, when he reached for an item on the shelf and the shelf collapsed onto his foot.
24 (Compl., Dkt. No. 1, Ex. A.) The impact allegedly caused Plaintiff to fall to the ground, and he
25 broke his toes and sustained a knee injury. *Id.*

26 On January 20, 2015, Plaintiff filed a personal injury action against Home Depot in Marin
27 County Superior Court for negligence and premises liability, in which he sought recovery of wage
28 loss, hospital and medical expenses, general damages, and compensatory damages. (Compl. ¶¶ 10-

1 11, 14.) Plaintiff's complaint did not specify the amount in controversy. *See id.* On March 13,
2 2015, Defendant filed an answer. (Dkt. No. 1, Ex. B.) On June 3, 2015, Plaintiff filed a case
3 management statement in which he stated that his damages exceeded \$100,000. (Case
4 Management Conference Statement, Dkt. No. 1, Ex. C.)

5 On June 30, 2015, Home Depot removed the case to federal court on the grounds that,
6 prior to the filing of the case management statement, it was unaware that the amount in
7 controversy exceeded \$75,000, such that federal jurisdiction exists as there is complete diversity
8 of citizenship between the parties. (Not. of Removal, Dkt. No. 1.)

9 On July 30, 2015, Plaintiff filed a motion to remand the case to Marin County Superior
10 Court. (Pls.' Mot. to Remand, "Pls.' Mot.," Dkt. No. 10.) On August 13, 2015, Defendant filed
11 an opposition. (Def.'s Opp'n, Dkt. No. 14.) On August 20, 2015, Plaintiff filed a reply. (Pl.'s
12 Reply, Dkt. No. 19.)

13 II. LEGAL STANDARD

14 A. Removal

15 District courts have jurisdiction in civil actions where there is complete diversity of
16 citizenship among the parties and the amount in controversy exceeds \$75,000, exclusive of interest
17 and costs. 28 U.S.C. § 1332(a). There is a "strong presumption against removal jurisdiction."
18 *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). This principle dictates that the removal
19 statute be "strictly construed against removal jurisdiction." *Id.* "The strong presumption against
20 removal jurisdiction means that the defendant always has the burden of establishing that removal
21 is proper," and that the court resolves all ambiguity in favor of remand to state court. *Hunter v.*
22 *Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009).

23 The procedure for removal of civil actions is governed by 28 U.S.C. § 1446. A notice of
24 removal must be filed within 30 days after the receipt of the initial pleading or

25 if the case stated by the initial pleading is not removable, a notice of
26 removal may be filed within 30 days after receipt by the defendant,
27 through service or otherwise, of a copy of an amended pleading,
motion, order or other paper from which it may first be ascertained
that the case is one which is or has become removable.

1 28 U.S.C. § 1446(b)(1),(3). Thus, the first thirty-day period for removal in 28 U.S.C. § 1446(b)
2 only applies if the case stated by the initial pleading is removable on its face. *Harris v. Bankers*
3 *Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005). And “[t]he second thirty-day period for
4 removal applies when ‘the case stated by the initial pleading is not removable.’” *Id.* (quoting §
5 1446(b)(3)).

6 **B. Request for Judicial Notice**

7 As a general rule, a district court may take notice of facts not subject to reasonable dispute
8 that are “capable of accurate and ready determination by resort to sources whose accuracy cannot
9 reasonably be questioned.” Fed. R. Evid. 201(b); *United States v. Bernal–Obeso*, 989 F.2d 331,
10 333 (9th Cir. 1993). “[A] court may take judicial notice of ‘matters of public record.’” *Lee v. City*
11 *of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)(quoting *Mack v. S. Bay Beer Distrib.*, 798 F.2d
12 1279, 1282 (9th Cir. 1986)). The court need not accept as true allegations that contradict facts
13 which may be judicially noticed. *See Mullis v. United States Bankruptcy Ct.*, 828 F.2d 1385, 1388
14 (9th Cir. 1987).

15 **III. DISCUSSION**

16 **A. Request for Judicial Notice**

17 As a preliminary matter, Plaintiff asks that the Court take judicial notice of a
18 purportedly true and correct copy of the proof of service of summons in the instant case.
19 (Req. for Judicial Notice (“RJN”), Dkt. No. 11, Ex.1.) The proof of service states that the
20 complaint was served on January 29, 2015. *Id.*

21 Defendant does not oppose the request for judicial notice.

22 A district court may take notice of facts not subject to reasonable dispute that are
23 “capable of accurate and ready determination by resort to sources whose accuracy cannot
24 reasonably be questioned.” Fed. R. Evid. 201(b); *United States v. Bernal–Obeso*, 989 F.2d
25 331, 333 (9th Cir. 1993). True and correct copies of court records are not subject to
26 reasonable dispute and are proper subjects of judicial notice. *United States v. Wilson*, 631
27 F.2d 118, 119 (9th Cir. 1980).

28 Accordingly, Plaintiff’s request for judicial notice is GRANTED.

1 **B. Motion to Remand**

2 Plaintiff moves to remand the case on the grounds that Defendant's notice of removal was
3 untimely. (Pl.'s Mot. at 2.) Specifically, Plaintiff contends that the service of the initial complaint
4 on January 29, 2015 required Home Depot to file a notice of removal by February 27, 2015.¹ *Id.*
5 Home Depot claims that removal was timely, because it first ascertained that the amount in
6 controversy exceeded \$75,000 when it was served with Plaintiff's case management conference
7 statement, which alleged an amount in controversy that exceeds \$100,000. (Def.'s Opp'n at 3.)

8 The Ninth Circuit has construed § 1446(b)(3) to mean that the "thirty day time period for
9 removal starts to run from defendant's receipt of the initial pleading only when that pleading
10 affirmatively reveals on its face the facts necessary for federal court jurisdiction." *Harris v.*
11 *Bankers Life & Cas. Co.*, 425 F.3d 689, 690-91 (9th Cir. 2005). Otherwise, the thirty-day period
12 begins when it becomes apparent that the case has become removable by "an amended pleading,
13 motion, order or other paper." *Id.* at 696; 28 U.S.C. § 1446(b)(3).

14 Plaintiff argues that removal is untimely because Defendant could have removed the action
15 when the complaint was filed, as it was plausible that the amount in controversy requirement was
16 met. (Pl.'s Reply at 3-4.) Plaintiff, however, misconstrues the recent United States Supreme
17 Court's decision in *Dart Cherokee*, which held that "a defendant's notice of removal need include
18 only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.
19 Evidence establishing the amount is required by § 1446(c)(2)(B) only when the plaintiff contests,
20 or the court questions, the defendant's allegation." *Dart Cherokee Basin Operating Co., LLC v.*
21 *Owens*, 135 S. Ct. 547, 554 (2014). In sum, *Dart Cherokee* involved whether a defendant's
22 assertion that the amount in controversy requirement is met, absent evidence in support of the
23 allegation, is sufficient to satisfy the "short and plain statement" requirement for removal. *Id.* at
24 551. It does not stand for the proposition that the thirty-day clock for removal begins to run if it is
25 plausible that the amount in controversy requirement is met.

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¹ The Court notes that Plaintiff's timing computation is inaccurate, because, pursuant to Rule 6,
28 the last day after the complaint was served would have been extended to March 2, 2015, when the
thirtieth day fell on Saturday, February 28, 2015. *See Fed. R. Civ. P. 6(a)(1)(C)*. This error,
however, is of no consequence, since the notice of removal was not filed until June 30, 2015.

1 Indeed, the Ninth Circuit has explicitly rejected the argument that a case becomes
2 removable where the initial pleading provides a “clue” regarding removability. *Harris*, 425 F.3d at
3 696; *see also Ackerberg v. Citicorp USA, Inc.*, 887 F. Supp. 2d 934, 939 (N.D. Cal. 2012). In
4 *Harris*, the Ninth Circuit held that “jurisdictional and procedural interests [are] served by a bright-
5 line approach” restricted to the face of the complaint. *Harris*, 425 F.3d at 696. Here, the
6 complaint does not affirmatively state an amount in controversy. While the complaint’s brief
7 statement regarding Plaintiff’s injuries made it possible that the amount in controversy exceeded
8 \$75,000, it did not become apparent until the June 3, 2015 case management statement, in which
9 Plaintiff claimed that his damages exceeded \$100,000. By filing the notice of removal within 30
10 days of the case management statement, Defendant’s removal was timely.

11 **IV. CONCLUSION**

12 For the reasons set forth above, Plaintiff’s request for judicial notice is GRANTED.
13 Furthermore, Home Depot’s notice of removal, filed within 30 days of Plaintiff’s case
14 management conference statement, was timely. Therefore, Plaintiff’s motion to remand is
15 DENIED.

16 IT IS SO ORDERED.

17 Dated: September 15, 2015

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19 KANDIS A. WESTMORE
20 United States Magistrate Judge

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